

1 discuss that we discussed off the record that they feel  
2 should be repeated on the record or any additional  
3 matters?

4 (No response.)

5 JUDGE GONZALEZ: All right.

6 I was informed before we went on the record  
7 that there have been some preliminary discussions with  
8 respect to the possibility of reaching a settlement in  
9 this matter.

10 And I certainly would encourage that the  
11 parties continue to pursue that possibility and also to  
12 remind the parties that the Commission favors a time  
13 sharing arrangement as well, so I am sure that will be  
14 a subject that will come up.

15 Anything further?

16 (No response.)

17 JUDGE GONZALEZ: All right.

18 If there is nothing further, then we will  
19 adjourn as of 9:18.

20 Thank you very much.

21 (Whereupon, at 9:18 a.m., the prehearing  
22 conference in the above-entitled matter was concluded.)

23

24

25

- - -

C E R T I F I C A T E

This is to certify that the attached proceedings before th  
Federal Communications Commission

in the matter of: Nyack, New York

Docket Number: 91-157

Place: Washington, D.C.

Date: August 22, 1991

were held as herein appears, and that this is a true and  
accurate record of the proceedings.

CAPITAL HILL REPORTING, INC.

BY: William J. Moffitt  
William J. Moffitt  
Official Reporter

ATTACHMENT E



State University of New York

State University Plaza  
Albany, New York 12246

Office of the University Counsel  
and Vice Chancellor for Legal Affairs  
(518) 443-5400

July 1, 1991

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, D. C. 20554

Re: MM Docket 91-157

Dear Ms. Searcy:

Pursuant to section 1.221(c) of the Commission's Rules and paragraph 10 of the Hearing Designation Order, I enclose three Notice of Appearances and a certificate of service on behalf of applicant State University of New York.

Applicant State University of New York claims a statutory exemption from any filing fees. The State University of New York is a public educational institution in the nature of a corporate State governmental agency established pursuant to Article 8 of the Education Law of the State of New York. The State University of New York is an integral element of New York State government. The applicant is a noncommercial educational FM broadcast licensee.

The Hearing Designation Order did not make reference to the applicability of the Commission's new procedures for comparative hearings. I am therefore not serving the Standard Document Production Order and the Standardized Integration Statement with this filing (See 47 CFR 1.325 [c][1]).

Sincerely yours,

Lewis E. Rosenthal  
Associate Counsel

Enc.

cc: Mr. Prusslin

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D. C. 20554

MM Docket No. 91-157

In re Applications of

SACRED HEART  
UNIVERSITY, INC.  
Channel No. 210B1  
Noyack, New York

File No. BPED-891215MK

CONNECTICUT  
PUBLIC  
BROADCASTING, INC.  
Channel 210A  
Southampton, New York

File No. BPED-900306MD

LONG ISLAND  
UNIVERSITY  
Channel 210B1  
Noyack, New York

File No. BPED-900516MA

LONG ISLAND  
EDUCATIONAL  
TV COUNCIL, INC.  
Channel 210A  
Southampton, New York

File No. BPED-900516MB

For Construction Permit for  
a New Noncommercial  
Educational FM Station

STATE UNIVERSITY  
OF NEW YORK  
Channel 211B1  
Stony Brook, New York

File No. BPED-900516MH

For Modification of the  
Facilities of Station WUSB (FM)

To: Administrative Law Judge Joseph P. Gonzalez

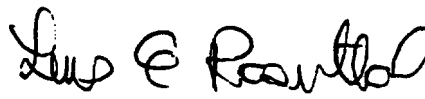
NOTICE OF APPEARANCE

State University of New York, by its attorneys and pursuant to Section 1.221(c) of the Commission's rules, hereby advises that it will appear in the above-captioned proceeding on the date fixed for hearing and present evidence on the issues specified in the Hearing Designation Order.

Respectfully submitted,

State University of New York

By:



Lewis E. Rosenthal  
Associate Counsel

Sanford H. Levine, Esq.  
University Counsel and Vice Chancellor  
for Legal Affairs  
State University of New York  
State University Plaza  
Albany, New York 12246

[518] 443-5400

CERTIFICATE OF SERVICE

I, Susan Taber, a secretary in the Office of University

do hereby certify that I have this 1st day of July 1961

ATTACHMENT F



1. A prehearing conference is scheduled for **February 19, 1992**, commencing at 9:00 a.m. in a Commission courtroom. The parties' counsel who are to litigate this case shall appear and be prepared to discuss designated and proposed issues, the evidentiary scope of this proceeding, the discovery needed, and th estimated time required to complete all discovery and to try this case. Counsel shall also be prepared to demonstrate compliance with the

agree on a mutually convenient schedule for the taking of depositions. Unless authorized by the Presiding Judge, interrogatories shall not be used by applicant parties.<sup>1</sup> The applicants shall agree on a Joint Document Production Request under the comparative issue which would be applicable to all applicants. This will ensure a uniform and reciprocal disclosure of documents. In the event one or more of the applicants has a specific document request relating specifically to one or more applicants, a motion for the production of such documents shall be separately filed.

## Preconference Report

4. By February 14, 1992, at 12 noon, a Joint Report SHALL BE SUBMITTED to the Presiding Judge reporting in full on the results of the meeting described in Para. 3 above and the scope of the discovery commenced. That report shall include, in addition to a report on the prospects for a share time arrangement, the points of agreements, and the scope of issues (particularly with respect to "other factors" which each party seeks to rely on to demonstrate a superior service), a description of the documents to be exchanged voluntarily and the date for such exchange, a description of any contested documents which will be sought by motion, a schedule for depositions, an identification and description of persons whose depositions will be sought by motion, subpoenas needed for witnesses, and a representation that a joint engineer shall be retained.

## Discovery

**5. Discovery SHALL COMMENCE by February 15, 1992, through the filing of an agreed Stipulation schedule for exchange of identified documents**

### Privileged Documents

7. Only documents need be produced on discovery which are not subject to the attorney-client privilege or the work-product exemption. Both types of documents are referred to as "privileged documents." Along with a party's document production there must be furnished a simultaneous list of any documents for which a privilege will be asserted.<sup>2</sup> Documents in that list shall be described by date, sender, receiver, persons noted for copies ("cc"), and a brief description of subject matter. The list shall be accompanied with a statement of the precise basis for the privilege(s) asserted that relies upon cited and analyzed points and authorities. See Tri-State Community Development and Communications Corp., 4 F.C.C. Rcd 2402 (Review Bd 1989); and LNJ Communications, 3 F.C.C. Rcd 2745 and 4411 (Review Bd 1988). Opposing applicants have five(5) business days from receipt of the privilege claims within which to file a motion to compel production of the documents. Oppositions shall be filed and served in 4 days. 47 C.F.R. §1.294(b). Uncontested privilege claims which are not facially defective will be accepted by the Presiding Judge without a ruling. Documents containing materials which are claimed only in part to be privileged must be produced initially with only the claimed privileged matters masked. The assertion and contesting of privilege of the excised matter shall apply only to those excised portions of the document.

### Depositions

8. There is no longer a requirement for 21 days' notice for principals' depositions. Such depositions of active and passive principals shall be noticed by the tenth day after exchange of SDP documents. Unless otherwise agreed, the parties shall take depositions in the city of license or in Washington, D.C. The parties must seek diligently to agree on the place, dates and times for taking depositions, at the lowest cost and the least inconvenience. If all parties concur, limited partners and non-voting shareholders (and persons similarly situated in membership organizations) may be deposed initially via telephone. 47 C.F.R. §1.318(c). Subsequent in person depositions of such witnesses may be sought by motion upon a showing of good cause. Depositions of non-party witnesses still require 21 days' notice under the prescribed time for completing discovery. Therefore, parties seeking non-party deposition discovery within the authorized discovery period should submit ex parte subpoena requests immediately on the passage of time for

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<sup>2</sup> Parties are urged to waive privileges to the maximum extent possible. It is common knowledge that communications counsel are generally actively involved at early stages of financing, site selection and application preparation. See Opal Chadwell, 103 F.C.C. 2d 840, 846 (Review Bd 1988) (Board takes note that the "regular business" of communications attorneys is the preparation and prosecution of Commission applications). Thus, parties are urged to engage in a free exchange of information about such matters without unnecessary delay. Cf. Raveesh K. Kumra, 5 F.C.C. Rcd 5607 (Review Bd 1990) (privilege to be confined strictly within the narrowest possible limits) and WWOR-TV Inc., 5 F.C.C. 6261, 6263 (1990) (Comm'n denied protection for documents on terms and conditions of employment or employment purposes).

oppositions, or immediately following a ruling that denies any opposition, and a request should be submitted to expand discovery for that purpose beyond the prescribed 30 days. See 47 C.F.R. §§1.315, 1.333 and 1.229(e). The parties may defer filing requests for admission of fact and genuineness of documents until up to 20 days after an opposing party's documents are produced and that party's deposition has been concluded. And request for short extensions incident to consent motions for additional time will be considered.

### Added Issues and Forfeitures

9. Petitions to add new issues must comply strictly with the standards and quality of proof required under the Commission's rule. 47 C.F.R. §1.229(d). See Great Lakes Broadcasting, Inc., 6 F.C.C. Rcd 4331 (Comm'n 1991) (strict adherence to standards of §1.229 required). Petitions for new issues must also include a request for relevant documents and, except for non-party discovery, all discovery relating to any added issues must be completed within 30 days of the Presiding Judge's rulings adding the issues and permitting discovery. <sup>3</sup> 47 C.F.R. §1.229(e).

10. Where the new issues involve allegations that an applicant has made misrepresentations to the Commission or engaged in other misconduct during the pending application's process, the petition to enlarge issues must address, with particularity, the standards for forfeiture, shall specify the amount of forfeiture believed to be applicable, and shall state reasons for the forfeiture remedy and the recommended amount. See 47 C.F.R. §1.229(f). See also 47 U.S.C. §503(b)(2)(A). <sup>4</sup> The parties are reminded that an added forfeiture issue remains with the case even after settlement. 47 C.F.R. §1.80(g).

### Procedural Dates

11. The following procedural dates are set to comply with the reformed time limitations and therefore these dates are firm:

March 10, 1992 - Preliminary engineering data submitted to Bureau Counsel.

**3 Depositions in connection with added issues must be noticed within 5**

- March 24, 1992 - Discovery is closed. [47 C.F.R. §1.311(c)-(1).]
- April 3, 1992 - Exchange and receipt by 3:00 p.m. (D.C. time) of all documentary exhibits (to include the exchanged SIS) and signed frozen sworn testimony.
- April 14, 1992 - Exchange and receipt by 3:00 p.m. (D.C. time) of witnesses requested for cross-examination stating reasons and legal precedent for each witness.
- April 21, 1992 - Exchange and receipt by 3:00 p.m. (D.C. time) of oppositions to witness requests.
- May 5, 1992 - Admissions session to commence at 9:30 a.m. in a Commission courtroom to receive written cases and to rule on the scope of cross-examination.
- May 11, 1992 - Final Joint Engineering Exhibit or Stipulation accompanied with an engineer's affidavit which negates the comparative coverage issue shall be submitted to the Presiding Judge.
- May 12, 1992 - Commencement of hearing at 10:00 a.m. in a Commission courtroom in Washington, D.C.

#### Exhibit Assembly

Exhibits are to be assembled with each exhibit bearing a number and with a tab on each document. The exhibits are to be serially numbered, starting with the number 1. A prefix is to be used to indicate the party sponsoring the exhibits. Each exhibit should be separately and consecutively paginated. If stipulations are entered into, they are to be executed by counsel, prepared as joint exhibits, tabbed and paginated.

#### Commission Filings

Parties are to have sufficient copies of excerpts of any Commission filings which are expected to be used on cross-examination so that copies can be distributed immediately to opposing counsel and to the Presiding Judge. While official notice may be relied on as a ground for the admission of Commission file records, official notice shall not be permitted as a substitute for the actual introduction of copies of documents that are used for cross-examination which must be properly marked and received in evidence.

#### Use of Depositions

Excerpts of deposition transcripts to be used on cross-examination must be available for distribution to counsel and the Judge at the time the

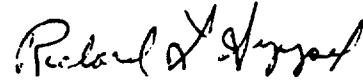
witness takes the stand to testify and only after proper marking of the excerpts and their identification as an exhibit. Alternatively, the witness or counsel may read into the record the relevant Qs and As that are relied on to refresh recollection or to show an inconsistency. Counsel are reminded that a proper foundation must be made for use of depositions on cross-examination and a copy of the transcript must be furnished to the Presiding Judge before the examination of the witness begins.

Extensions Of Time

Extensions of time with respect to discovery shall not be granted unless there is a clear showing of good cause and provided the request is made in advance of the due date. See 47 C.F.R. §1.46(a) (it is the policy of the Commission that extensions of time shall not be routinely granted). See also Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, 6 F.C.C. Rcd 157, 172 n. 34 (1992) (requests for extensions of time in comparative cases to be closely examined for clear showing of good cause). <sup>5</sup>

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel  
Administrative Law Judge

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<sup>5</sup> The parties are on notice that failures to comply with procedural and discovery orders of the presiding trial judge may result in dismissal. See Hillebrand Broadcasting, Inc., 1 F.C.C. Rcd 419 (1986); Tri-State Communications, 4 F.C.C. Rcd 8258 (Review Bd 1989). See also Warren Price Communications, Inc., 4 F.C.C. Rcd 1992 (1989).

ATTACHMENT G

(152)

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

NONCOMMERCIAL

FCC 92M-583  
02847

In re Applications of	)	MM DOCKET NO. 92-107
	)	
BIBLE BROADCASTING NETWORK, INC.	)	File No. BPED-900816MA
Channel 209A	)	
Fort Smith, Arkansas	)	
	)	
NATIONAL CHRISTIAN NETWORK, INC.	)	File No. BPED-900823MA
Channel 207C2	)	
Fayetteville, Arkansas	)	
	)	
For Construction Permit for a New	)	
Noncommercial Educational FM Station	)	

PREHEARING ORDER

Issued: May 19, 1992 ; Released: May 20, 1992

1. We will hold the prehearing conference on September 11, 1992, and the hearing will begin on September 29, 1992.<sup>1</sup> Both will begin at 8:30 a.m. in the Commission's offices in Washington, D.C. The parties will exchange their direct case exhibits at the September 11th prehearing.

2. Appearances and Publication. On or before June 3, 1992, each applicant must show that they've met 47 CFR 1.221(c)'s requirements. On or before June 15, 1992, each must demonstrate that they have met 47 CFR 73.3594(g)'s publication requirements. See DA 92-558 released May 14, 1992 at paras. 14 - 15.

3. Clarification of Issues. The Chief, Audio Services Division has designated a 47 USC 307(b) issue for hearing along with a non-commercial areas and populations issue. See DA 92-558 supra, Issues 2(a) and (c). On areas and populations, each applicant's engineer should immediately consult with the Bureau's engineer and iron out the ground rules for their evidentiary submissions in this case. Then those engineers should get started on their exhibit.

4. The parties should consider a joint areas and populations exhibit if only for reasons of economy. If you can't agree on a joint coverage exhibit, each applicant must not only portray their own areas and population

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<sup>1</sup> The Trial Judge has reserved courtroom space for three days, September 29, 1992 through October 1, 1992.



but your opponents as well. That will be a substantial added expense. It could also give rise to evidentiary conflicts. But both of you are alerted now. If you take the joint exhibit route you will be bound by that agreed-upon showing.

5. All preliminary engineering will be exchanged on or before July 23, 1992, and the final engineering will be exchanged at the September 11, 1992 prehearing. Any 307(b) non-engineering demographics will also be exchanged at the September 11 prehearing. All population data should be based on the latest U.S. Bureau of the Census figures. In that way we'll have comparable data.

6. The Chief has also set down a contingent comparative issue for hearing. See DA 92-558 supra, at para. 5 and Issue 3. So each applicant will be expected to prepare and exchange exhibits that (1) detail their overall non-commercial operation and objectives; (2) demonstrate the extent each of their proposed operations will be integrated into those overall operations and objectives; and (3) describe any other factors which show they'll provide a superior FM non-commercial broadcast service.

7. Finally, the Chief has designated a contingent basic qualifying issue against both Bible Broadcasting Network, Inc. and National Christian Network. See DA 92-558 supra, paras. 3 and 11 and Issue 1. So each applicant must file its EA amendment on or before June 15, 1992. And if they have not satisfied the Mass Media Bureau by the time of the September 11, 1992 prehearing conference, they'll submit their environmental direct case evidence on that day.

8. Both counsel should be prepared to discuss any questions about clarification of existing issues.

9. Perfecting Amendments. The Chief has called on both applicants to amend their applications on or before June 15, 1992. See DA 92-558, paras. 2, 3, 10 and 11.<sup>2</sup> All amendments must be accompanied by a Petition for Leave to Amend. See The New Continental Broadcasting Company, FCC 80M-102, released January 3, 1980 at Footnote 1.

10. Bible Broadcasting Network, Inc. is reminded that they cannot obtain any comparative advantage from the late-filed amendments they filed on July 22, August 26, October 9, November 7, December 20, 1992, and January 17 and April 7, 1992. See DA 92-558 supra, at paras 7 and 12. In addition, they will be charged with any comparative deterioration resulting from such amendments. See WTAR Radio-TV Corporation et. al., 48 FCC 2d 1147.

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<sup>2</sup> Both applicants are reminded that they must serve copies of their amendments pursuant to para. 13 of the Hearing Designation Order.

11. Discovery. The use of discovery is discretionary. Discovery must be initiated on or before June 15, 1992 and completed on or before August 13, 1992. No 47 CFR 1.315 and 1.323 written interrogatories will be employed. Bible Broadcasting Network, Inc.'s principals will be deposed in Fort Smith, Arkansas, and National Christian Network, Inc.'s in Fayetteville, Arkansas unless otherwise agreed-upon. Discovery is not to be used as a vehicle for obtaining data on which to base motions to enlarge issues. If issues are added later on, provisions for any needed discovery on those enlarged issues will be made in the enlargement order.

12. The parties will hold a discovery conference on June 8, 1992, at 10:00 a.m. They will meet in Bible Broadcasting Network, Inc. counsel's office unless otherwise agreed upon. There they will set up an agreed-upon deposition schedule; they should also agree on a joint motion for production of documents and how that joint motion will be implemented. <sup>3</sup>

13. Any Motion for an In Camera Inspection must be filed on or before June 15, 1992, and must comply with the five-step procedure in Patterson Communications Associates, 41 RR 2d 640 (1977) and 41 RR 2d 1027 (1977).

14. Settlement. The Chief, Audio Services has designated a share-time issue for hearing. See DA 92-558 supra. at para. 4, and Issue 2. So each applicant, if they so desire, can submit evidence on any share-time arrangement they believe would result in the most effective use of the channel. However, such a share-time arrangement could also be used to arrive at a prehearing settlement.

15. The case could prove long and costly. Because of lawyers and engineering fees both applicants will lose. At best one of you will have squandered substantial amounts of time and money prosecuting this case. Invariably there is a direct relationship between the length of trial and the amount of costs involved. The general rule is the longer the trial, the greater the cost. So from your client's viewpoint this prospective litigation is a mistake. Being merely another form of warfare it should be avoided. So engage in settlement dialogue now. Don't wait to argue before the Commission three and a half years from today.

---

<sup>3</sup> It's no defense to an otherwise legitimate discovery motion for the objecting party to claim that it intends to either file a Petition for Leave to Amend, or a Motion for Summary decision that will moot the discovery requests. Nor should an objecting party seek to defer a response to discovery on that ground.

16. To this end, a negotiating principal from each applicant along with their attorney (if they're not pro se) are directed to attend a disposition conference on August 20, 1992, at 2:00 p.m.<sup>4</sup> This face-to-face conference will be held at a prearranged agreed-upon location. There the applicants should determine whether this case can be settled.

17. On or before August 27, the applicants should submit a Joint Settlement Memorandum to the Trial Judge outlining the results of the August 20th disposition conference. The memorandum should include, but not necessarily be limited to, answers to the following questions:

(a) Has this case been settled? If so, do the settlement terms pose any public interest questions?

(b) If the case hasn't been settled, were any offers made at the conference? If so, are they still open? For how long?

(c) If the case has been settled, how soon can the settlement package, i.e., the joint request and the accompanying papers be submitted for approval?

18. Marshalling and Exchanging Exhibits. It will contribute significantly to the disposition of this proceeding for the parties to submit and exchange their direct affirmative cases in writing. This will include the sworn written testimony and the exhibits to be offered in support of their direct cases. Such an exhibit exchange will take place at the September 11, 1992 Prehearing Conference.<sup>5</sup>

19. If either party intends to request that official notice be taken of any materials in the Commission's files, that material should be assembled in written form, properly identified by source, given a tentative exhibit number and exchanged on the date set.

20. Each party will assemble its exhibits in a binder. Each exhibit will bear a number, preferably by means of a tab on each document. Please number the exhibits serially starting with the number 1. Each exhibit will

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<sup>4</sup> The applicants needn't wait until August 20, 1992 to talk settlement. Nor should the mandatory face-to-face conference be the only effort at settlement. In brief, neither party should be afraid to initiate settlement efforts.

<sup>5</sup> Before he exchanges his written exhibits, counsel would be wise to go over them and delete all unnecessary adjectives and comparative puffing. Let's save everybody time and money.



ATTACHMENT H

**STAMP & RETURN**

**BEFORE THE**

**FEDERAL COMMUNICATIONS COMMISSION**

**WASHINGTON, D.C.**

In Application of

1. 1012 1-1-50 2250

since JMU qualifies as a noncommercial educational licensee and a governmental entity pursuant to Section 1.1112 of the Commission's Rules.

This proceeding involves noncommercial educational applicants for a reserved frequency. Therefore, the Standard Document Production Order and the Standardized Integration Statement are not applicable and will not be served by JMU. See 47 C.F.R. §1.325(c)(1991).

Respectfully submitted,

BOARD OF VISITORS OF  
JAMES MADISON UNIVERSITY

By: Margaret L. Miller  
Richard D. Marks  
Margaret L. Miller

Its Attorneys

DOW, LOHNES & ALBERTSON  
1255 Twenty-third Street, N.W.  
Suite 500  
Washington, D.C. 20037  
(202) 857-2565

April 2, 1993

**CERTIFICATE OF SERVICE**

**I, Laurel Starkey, a secretary at Dow, Lohnes & Albertson, hereby**

**certify that a copy of the foregoing "Notice of Appearance" was served this**



CERTIFICATE OF SERVICE

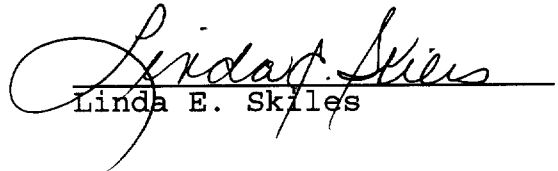
I, Linda E. Skiles, Office Administrator of the law firm of Shainis & Peltzman, do hereby certify that copies of the foregoing document were mailed this 26th day of April, 1993, to the offices of the following:

Administrative Law  
Judge Joseph P. Gonzalez \*  
Federal Communications Commission  
Room 221  
2000 L Street, N. W.  
Washington, D. C. 20554

Norman Goldstein, Esq. \*  
Hearing Branch, Enforcement Division  
Mass Media Bureau  
Federal Communications Commission  
Room 7212  
2025 M Street, N. W.  
Washington, D. C. 20554

Chief, Data Management Staff \*  
Audio Services Division  
Mass Media Bureau  
Federal Communications Commission  
Room 350  
1919 M Street, N. W.  
Washington, D. C. 20554

Julian P. Freret, Esq.  
Booth, Freret & Imlay  
Suite 204  
1233 20th Street, N. W.  
Washington, D. C. 20036

  
Linda E. Skiles

\* Via Hand Delivery